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Paper No. 9

In re Application of
Donn E. Albert
Application No. 10/047,390
Filed: January 16, 2002
Attorney Docket No. DEA-C-1

: DECISION ON PETITION

:

This is a decision on the petition filed by facsimile transmission on June 16, 2004 by which petitioner requests withdrawal of the examiner's holding that this application stands abandoned for failure to file a proper and timely reply to the Office action dated September 18, 2003. The petition is considered pursuant to 37 CFR 1.181, and no fee is required.

The petition is granted.

Petitioner alleges that the application is not abandoned because a reply to the Office letter in question was not filed due to the fact that the Office letter was not received. Petitioner has supported this allegation in a manner which satisfies the requirements of the Notice published at 1156 OG 53 which establishes the minimum requirements for an evidentiary showing in support of an allegation of nonreceipt of Office correspondence. See also MPEP § 711.03(c), subsection A, entitled "Petition To Withdraw Holding of Abandonment Based on Failure To Receive Office Action", (8th Edition, Rev. 2, May 2004). Based upon this evidence, it is clear that this application is not abandoned.

Accordingly, the Notice of Abandonment is hereby vacated, the holding of abandonment is withdrawn, and the application is restored to pending status. The application is being forwarded to the Head Supervisory Applications Examiner to re-mail paper No. 6, including all attachments and copies of references, if any. Thereafter, the application will be forwarded to the examiner for appropriate.

PETITION GRANTED.

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